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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE DISTRICT OF PUERTO RICO
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7 DATA RESEARCH CORP. -
8 et. al., - CIVIL NO. 02-1253 (JAG)
9 Plaintiffs - C/W 02-1625 (JAG)
10 Vs. -
11 CÉSAR REY HERNÁNDEZ, -
12 et. al., -
13 Defendants -
14 Vs. -
15 SILA CALDERON, -
16 Defendants -

17 - - - - -
18 Deposition of:
19

20 CÉSAR REY HERNÁNDEZ

21 Taken on Monday October 6th, 2003, at the offices of John
22 Neváres & Associates, located at 1225 Ponce de León Avenue,
23 VIG Building, 15th Floor, Santurce, Puerto Rico.
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1 APPEARANCES:

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27 Notary Public: **JUDITH TORRES DE JESUS, ESQ.**

28 Court Reporter: María Malavé

29 Court Interpreter: Lauren García

30 (AT WHICH TIME THE COURT REPORTER, THE INTERPRETER AND THE

1 DEPONENT ARE DULY SWORN IN BY MS. JUDITH TORRES DE JESUS)
2 Whereupon,

3 **CÉSAR REY HERNÁNDEZ**

4 After having been duly sworn in, testified as follows:

5 **DIRECT EXAMINATION**

6 BY MR. CAMILO SALAS:

7 Q Dr. Rey, good afternoon.

8 A Good afternoon.

9 Q My name is Camilo Salas and I represent the
10 plaintiffs in a lawsuit that has been filed in the United
11 States District Court for the District of Puerto Rico on
12 behalf of DRC Corporation and others against yourself and
13 other members of the current administration of Puerto Rico.

14 I want to ask you some questions. If you don't
15 understand any of the questions that I ask you in English,
16 let me know and we have a translator here, and then she can
17 translate for you.

18 A That's fine.

19 Q I understand you were in fact testifying in Court
20 yesterday, so you have experience giving testimonies.

21 A Yes, sir.

22 Q Would you please state your name and your address
23 for the record?

24 A César Rey Hernández, and I'm a resident of Hato
25 Rey.

1 Q Dr. Rey, by whom are you employed?

2 A The Commonwealth of Puerto Rico.

3 Q In what capacity?

4 A Secretary of Education.

5 Q How long have you held that job?

6 A Two years and approximately eight months.

7 Q Let me ask you a little bit about your background.

8 I know you have a Ph.D.

9 A That's right.

10 Q In what area?

11 A Sociology, from the National Autonomist University
12 of Mexico. "Universidad Nacional Autónoma de México".

13 Q Now, what is the extent of your knowledge about
14 computers? Is it like mine, very little?

15 A Probably. I just turn on the computer and I know
16 how to get in and surf around cyber space, and that's about
17 it, really. I am not a "techy" by any means.

18 Q Let me get right down to the bottom of this matter
19 since it's late in the day. You wrote a letter on January
20 23rd, 2002, addressed to Santos Díaz, President of DRC
21 Corporation, is that correct?

22 A That's correct.

23 Q And by that letter, you intended to cancel certain
24 contracts between DRC and the Department of Education?

25 A That is correct, Counsel.

1 Q Let me just show you the letter, make sure you have
2 reviewed it recently.

3 We want to mark a copy of that letter as Rey,
4 Exhibit number 1.

5 (AT WHICH TIME DEPOSITION EXHIBIT NUMBER 1 IS MARKED)

6 BY MR. CAMILO SALAS:

7 Q Prior to, in the process of writing that letter,
8 did you consult with anybody?

9 A Yes, this is basically about a year after I was
10 holding the position of Secretary. And evidently, that
11 process is the culmination of evaluations of some statements
12 of the Federal Government, specifically USAC, and product of
13 some field evaluations by the experts, meaning of the
14 personnel who was advising me in the technical area together
15 with the E-Rate Project.

16 And undoubtedly, a product of all the findings that
17 we received when we arrived at the Department, regarding
18 everything dealing with technology.

19 Undoubtedly, after a notice from USAC in December,
20 we evaluated the situation, and as a result of that
21 evaluation we took the action defined in that letter.

22 Q Who made the decision to terminate the contracts?

23 A I received recommendations from three people, those
24 are Anibal, Adonay, and José Santana. Those are the three
25 persons who advised me and recommended it to me.

1 Q So, are you saying that Adonay Ramírez recommended
2 to you that you terminate the contracts with DRC?

3 A Well, the specific recommendation to terminate the
4 contract is from Dr. Anibal Cruz.

5 Q So, Adonay Ramírez did not make a recommendation to
6 terminate the contract?

7 A Adonay Ramírez is part of the group that evaluates
8 the whole process, just as Professor José Santana.

9 Q So, José Santana just did an evaluation for you?

10 A José Santana is part of the discussion of the
11 evaluation process that is made within the Department.

12 Q Alright, but José Santana never gave you a specific
13 recommendation to cancel the contract?

14 A I don't remember that. I do know that they discuss
15 it among themselves, they decide among themselves to make
16 some recommendations.

17 Q And the notification from USAC that you referred to
18 is the letter from Mr. McDonald dated December of 2001?

19 A December, as I recall, December 2001, that's right.

20 Q And have you reviewed Mr. McDonald's letter
21 recently?

22 A I've read it a couple of times, yes.

23 Q Do you recall the things that Mr. McDonald was
24 complaining about?

25 A Not in details.

1 Q I'm going to show you Mr. McDonald's letter which
2 is dated what, December 5th, 2001?

3 A That's right.

4 Q Addressed to you?

5 A That's right.

6 Q Why don't you review it and tell me what are the
7 four or five things that Mr. McDonald was complaining about?

8 A I believe, the fact that already by '98, January 1st
9 of '98 there had already been some commitment for money,
10 specifically 46.2 million dollars.

11 Specifically, in essence what is being brought up
12 is the performance, the lack of agreement with the
13 performance. There is, of course, a concern of USAC
14 regarding some information they have received from the
15 Department of Education.

16 It is demanded that within 30 days we take some
17 action and prove it, have evidence of it. And obviously, as
18 a result of an audit, there is not evidence of adequate
19 performance.

20 This letter from our point of view, of course, when
21 the decision is taken, is a letter that in a way validates
22 what we had detected from the beginning of the school year,
23 in terms of the deficiency in the connections, the bad inter
24 relationship within the systems that exist, the wireless with
25 the other one relying on the phone, and obviously, the

1 dissatisfaction existing with the mounting of the whole
2 process, which to our surprise endangered the funds received
3 and could even include the return of money from that fund.
4 Something for which for obvious reasons in the country was
5 onerous and a budget that was already in deficit.

6 Q Why don't you hand your copy, if you don't mind,
7 so, I'll ask a couple of specific questions.

8 MR. A.J. BENNAZAR: Which document are we, still on
9 the December 5th letter or we are going to move?

10 MR. CAMILO SALAS: Yes, of course, no, no.

11 MR. A.J. BENNAZAR: Okay, the December 5th letter.

12 BY MR. CAMILO SALAS:

13 Q In the second page of that letter.

14 A Yeah.

15 Q About at the beginning of the bottom of page 1,---

16 A "As you know"?

17 Q Yes, "As you know PR DOE was selected for the
18 beneficiary review during the summer of 2000, to be conducted
19 by Arthur Anderson, LLP on behalf of Universal Service
20 Administrative Company, the final report on the beneficiary
21 review of PR DOE concluded as follows, and then I'll let you
22 read what they have quoted there. Why don't you read it out
23 loud so we have that for the record.

24 A Sure. "Anderson noted that there were no desktop
25 computers in any of the classrooms", this is at E-Rate

1 schools, "consequently due to the lack of classroom computers
2 we ascertain that the PR DOE was not able as of the date of
3 our site visit to fully meet the educational objectives and
4 training requirements for which E-Rate funding had been
5 provided."

6 Q Then skipping one paragraph, then it continues, it
7 says "USAC is very concerned regarding this finding."

8 A That's right.

9 Q "Not only did we permit 46.2 million to PR DOE for
10 the funding year 1, we also permitted 56.9 million for
11 funding year 2, (July 1, 1999 through June 30th, 2002) and
12 55.6 million for funding year 3, (July 1, 2003 through June
13 30th, 2001). "PR DOE has funded in a year for request of in
14 over 40 million pending with SLD."

15 Now, it goes in another paragraph: "In light of
16 USAC's concerns, PR DOE must provide additional information
17 concerning it's ability to use school and library support
18 mechanisms funded before USAC will commit any additional
19 funding to PR DOE, and before USAC can decide whether we
20 should seek recovery of some of the funds that have been
21 dispersed, we must determine whether the PR DOE has been
22 meeting its responsibility to make effective use of the
23 services for which it has been providing discounts".

24 And then they'll give you, they requested that you
25 provide certain information within 30 days, true?

1 A That's correct.

2 Q And then the last paragraph of that letter says
3 "Further more, given this audit finding, we are concerned
4 that you may not have the other necessary resources
5 referenced above."

6 "If there are no computers, we are concerned that
7 you may not have secure access to sufficient software or that
8 you may not have trained your teachers".

9 "We are also concerned that you may have not secure
10 access to sufficient maintenance or that you may not have
11 upgraded your electrical connections in this and other
12 schools".

13 "Therefore, please also provide specific and
14 detailed information about your investments in productivity
15 and curriculum software, your progress in delivering
16 professional development to insure that educators know how to
17 use this new technology to improve education, your resources
18 to maintain computers and peripherals, and your evaluation
19 of, and any necessary upgrades to electrical systems in your
20 schools." True?

21 A That's right.

22 Q Now, maybe I didn't read it the way you read it,
23 but as I understood this letter, USAC was concerned that 1,
24 no computers had been provided to the schools, is that not
25 right?

1 A That's the way I understand it, correct.

2 Q That was one of the concerns, right?

3 A One concern, correct.

4 Q Another concern was that, perhaps, the adequate
5 software had not been provided to the schools, true?

6 A Correct.

7 Q Another concern was that, perhaps, the teachers had
8 not been trained on how to operate the computers and
9 Internet, so that they could teach the students how to do it?

10 A That is correct.

11 Q And another area was that there may not be
12 maintenance of the computers and the systems?

13 A Correct.

14 Q Did you get a chance to review the Anderson report
15 itself that spoke about these findings?

16 A At that time we judged some of the findings.

17 Q What I want to know is where in the letter of Mr.
18 McDonald does it say, as you read it anyway, that there was
19 anything wrong that had been done by the contractors such as
20 DRC?

21 A My point is that the expertise, the experience that
22 comes from decision making. What do I mean by this? The
23 picture, the picture I get about the way the system has been
24 working, is the picture of the dysfunctional way that
25 everything had been dealt with.

1 What does that mean? That because of a large
2 amount of equipment placed in a large number of schools,
3 obviously very expensive, but the connectivity as I remember
4 during the first few months of my being a Secretary was
5 totally inoperative.

6 There were not even a dozen schools, not even one
7 dozen schools that could connect with that system to the
8 Internet.

9 The dissatisfaction and lack of knowledge of the
10 teachers about what had happened, was very eloquent, Counsel.

11 As a matter of fact, we made a survey with the
12 teachers about the knowledge and control of the System as it
13 would help the Education System, and how to apply that
14 knowledge on the day by day use of their teaching knowledge.

15 And it definitely corroborated what we had been
16 doing our first year of service, deciding and seeing on our
17 investigation.

18 As a matter of fact, it was a very sad situation
19 which after the trust that had been placed on us, and the
20 expense, that the ineffectiveness of the program was so
21 eloquent between teachers and students, and workers in the
22 System. Situation which has led us to permanently guarantee
23 USAC all the efforts we are doing to reconstruct, first the
24 trustworthy image of what has been done in our country, and
25 the trust in the part of the community that the investment in

1 technology has some utility.

2 Q I suppose that by January of 2002, you had learned
3 something about the E-Rate funds?

4 A Well, yes, I was advised about the E-Rate, the
5 function, the conditions that existed, even in the United
6 States, regarding these funds.

7 As a matter of fact, on the second day when I got
8 here, the very first big hurdle I faced was to prepare to
9 submit that request, just two days after I assumed my
10 responsibilities. I think I had 15 to 18 days to comply with
11 the deadline.

12 Q That was to submit the request for funds?

13 A That was to submit the request, if I recall.

14 Q What I wanted to find out is, did you learn, prior
15 to January of 2002, that when requests for funds had been
16 made to USAC, the Department of Education had represented
17 that it had the funds to provide such things as computers,
18 software, teacher training, electricity for the schools, and
19 maintenance for the computers?

20 A I don't know to what instance you are referring to,
21 Counsel? You said knowledge or that I had told USAC about
22 this? Perhaps I don't understand the question.

23 Q You are aware of the fact that in order to request
24 funds, there were two forms, one of them that was needed to
25 be made and to be submitted was the 470 and 471, true?

1 A That's right.

2 Q Did you know that in submitting the 470, the
3 request for discounts, there was a certification made there
4 that the Department of Education had sufficient funds to
5 provide five other things that were needed?

6 A That was training, maintenance and...

7 Q Right, to be able to have a network and access to
8 the Internet, which were those five things that I mentioned
9 before?

10 A I suppose that the way it was submitted, there must
11 have been a way of analyzing that, some measures.

12 Q You said that you came into the job and the first
13 thing that you had to do was submit a 470, right?

14 A That's right.

15 Q Right, and you signed that in---

16 A Two weeks, yeah.

17 Q You signed that yourself, true?

18 MR. A.J. BENNAZAR: I just want to clarify for the
19 record that I believe it's a 471.

20 MR. CAMILO SALAS: 471, alright, I apologize.

21 BY MR. CAMILO SALAS:

22 Q And you signed that form yourself?

23 A Correct.

24 Q Somebody had filled it out for you?

25 A That was worked by the equipment that we had for

1 that including Professor José Santana as part of the
2 equipment. Even people who had worked on that before.

3 Q And you would have signed that form based on their
4 advice?

5 A Exactly, after evaluating what was analyzed by
6 them, Counsel.

7 Q Did you know that by signing that form, you were in
8 fact certifying to the Federal Government that the Department
9 of Education of Puerto Rico had sufficient funds to provide
10 all those five other items that were needed as a complement
11 to the, whatever the Federal Government was going to provide
12 on the E-Rate funds?

13 A I have no doubt and it is important to know that in
14 that year which was my first year, besides growing and the
15 equipment, the team, what we wanted to was to strengthen what
16 were obviously the deficiencies in the connectivity.

17 Q Did you know that the first year that those funds
18 had been requested from the Federal Government, a similar
19 certification had been made by whom was then the Secretary of
20 Education?

21 A I suppose that its request must have had some
22 guarantee, of course.

23 Q Did you know that E-Rate funds could only be used
24 for Internet services, pure Internet services, but not for
25 any hardware, computers, electrical connections, teacher

1 training, software, or things of that nature?

2 A The details of the technical aspects, I obviously
3 do not have the information, Counsel. The spirit of E-Rate is
4 obviously to support obtaining of knowledge on part of the
5 students.

6 Q Were you told by any of your advisors, or did you
7 learn on your own by reading or otherwise, that the
8 regulations that governed the use of E-Rate funds,
9 specifically prohibit the use of those funds to do things
10 such as electrical connections in schools? Did you know
11 that?

12 A I can not go into the details of it, but I know
13 that regarding the spirit of E-Rate is that we made our
14 recommendation and we worked on that, and that was the base
15 for our request.

16 Q You were aware of the fact that when the Department
17 of Education asked for E-Rate funds, the Department of
18 Education had committed itself to providing desktop computers
19 for the students, right?

20 A The beginning of all this, this all started under
21 the prior Secretary, not by me. We continue with this and we
22 had to make our own evaluation after this year, it was the
23 fourth year. And we submit that petition according to the
24 picture that we have on this matter, and together with what
25 the law requires.

1 Well, the picture we have at this time, at that
2 time.

3 Q When you received the December 5th, 2001 letter from
4 Mr. McDonald, and you read the paragraph that quotes the
5 Anderson report and says in that part the following:
6 "Anderson noted that there were no desktop computers in any
7 of the classrooms visited at either school".

8 When you read that, did you inquire who had the
9 responsibility of providing computers for the classrooms?

10 A Undoubtedly when I received that report I
11 investigated or had investigated all the aspects on that
12 letter in order to determine its veracity or its
13 interpretation.

14 Q So, then you would have been told by your assessors
15 that the Department of Education had an obligation to provide
16 computers for the schools so that the computers could be used
17 in access in the Internet?

18 A I would have to go back to the evaluation made and
19 the recommendation at the time.

20 Q So, you have no recollection today about it?

21 A No, I don't keep those details. I'm in charge of
22 an operation of close to 2.5 billion dollars, 600,000
23 students, and over 72,000 employees, so I do not keep all the
24 details on memory.

25 Q So, what is the evaluation that we need to look at

1 to determine what was the assessment that was done at the
2 time?

3 A I believe the decision is taken over one year of
4 experience and recurring reports. And obviously,
5 dissatisfaction which was what was being evidenced as the
6 product. And based on the law, the provisions of law, one
7 makes one's own decision.

8 Q Did you believe at the time that DRC had failed to
9 provide computers for the schools?

10 A During the evaluation that was made at the time,
11 Counsel, that was our conclusion.

12 Q So, at the time you believed that it was DRC's
13 obligation to provide computers to the schools and that it
14 had failed to do so?

15 MR. A.J. BENNAZAR: Objection, misrepresents the
16 witness' prior testimony. Specifically, he told you he was--

17 MR. CAMILO SALAS: Wait, wait, that's enough.
18 You've made your objection. No, you've made your objection--

19 MR. A.J. BENNAZAR: You are misrepresenting his
20 prior testimony.

21 MR. CAMILO SALAS: No, no. You've made the
22 objection.

23 BY MR. CAMILO SALAS:

24 A (DEPONENT) The evaluation at the time was of
25 dissatisfaction with DRC. And that leaves me to the

1 prerogative I took.

2 Q And I want to talk about the details of the
3 evaluation of DRC and what you thought DRC was doing wrong.
4 So, in connection with that, I want to ask you, and I think
5 I've asked you, and I think you've given me an answer, but
6 I'm trying to clarify. Did you believe at the time that DRC
7 had failed to provide computers to the schools?

8 A No, I can not go into details of that kind,
9 Counsel. The dissatisfaction was the result of all kinds of
10 phases involving the analysis, the dissatisfaction between
11 students and teachers that after all this investment, there
12 was a dramatic uncertainty as to what technology was in the
13 Department of Education.

14 Of course, that is the whole process that then with
15 the details of the specialists and with the provisions of
16 law, that's how we reached a decision. At that time, of
17 course.

18 Q Mr. McDonald's letter quotes the Anderson report
19 which I read in part, and let me just finish reading it now.
20 It says "Consequently, due to the lack of classroom
21 computers, we ascertain that the Puerto Rico Department of
22 Education was not able, as of the date of our site visit, to
23 fully meet the educational objectives and training
24 departments for which E-Rate funding had been provided".

25 So, it specifically says that because of the lack of

1 classroom computers, they believe that the Department of
2 Education could not meet the educational objectives for the
3 funds that they had given you, because of the lack of
4 classroom computers.

5 My question to you is, as of that date, on January
6 23rd, 2002, who did you believe had failed to provide the
7 computers that Mr. McDonald and the Anderson report were
8 complaining about?

9 A I have to insist on my answer, Counsel.

10 Q You don't know?

11 A No, it's that I don't have the details. It was
12 total dissatisfaction.

13 It is due to what had happened during that year,
14 and because of the ministerial and judiciary obligations of
15 myself, I evidently have to make a decision based on what is
16 recommended to me by the technicians and the attorneys.

17 Q So, maybe this will shorten this thing. As we sit
18 here today, you can not describe for me what were the
19 deficiencies that at the time, back on January 23rd, 2002, you
20 believe were attributed to DRC?

21 A I can talk to you about the deficiencies, Counsel,
22 that at that time we found on the system, as I understand it,
23 at my executive level, which I believe it's important, if you
24 agree, to describe them. Equipment that was not connected,
25 equipment that was, and this I saw, this was not informed to

1 me, that was facing the walls with the backs towards the
2 classroom, specifically Cacique Agueybaná in Bayamón. Boxes,
3 the famous black boxes, which we saw in many schools, and I
4 have already visited more than 750 schools. That when one
5 arrived, the first thing asked was "When is this going to be
6 connected?" and "What is this thing we have here good for?"

7 Computers that were distributed without the
8 adequate training, observing air conditioners, computers and
9 terminals which could not be turned on at the same time
10 because there would be a shut down in the whole system in the
11 whole school.

12 And to know that there weren't more than a dozen
13 schools that after all that noise about investment, they
14 could not connect to the system.

15 I mean, we went back to practically square one, we
16 started from zero. And I recall seeing what was good of
17 what we had there was.

18 I'll tell you more, we evidenced that connections
19 that had been made in for structures had been eaten by
20 rodents. There were tubes full of water, making the
21 connection that had been made in another time, useless.

22 I have to talk to you about this, Counsel, as
23 evidence that I lived, that I went through. I can not talk
24 to you about legal aspects, but I can tell you what I saw.
25 Because, and it was a very painful thing to see that you had

1 the equipment in front of you, but you were not able to use
2 it.

3 And I saw sophisticated equipment. There was
4 equipment that was certainly sophisticated, but it was
5 useless for the children. So, that's the reality, combined
6 with the details, you know, makes the whole story, as I see
7 it.

8 Q Sure. Let's talk a little about that in a little
9 more detail. Certainly without, even for somebody with the
10 knowledge of computers that we described at the beginning of
11 the deposition, you know, that in order to access the
12 Internet, you need a computer, a desktop PC, true?

13 A That's right.

14 Q Now, there were no PC's in the schools, right?

15 MR. A.J. BENNAZAR: Objection, misrepresents the
16 witness' prior testimony. He has never said that there were
17 no PC's.

18 MR. CAMILO SALAS: I'm asking him, were there...

19 BY MR. CAMILO SALAS:

20 Q Well, let me ask you another question.

21 MR. A.J. BENNAZAR: You read a finding. He has
22 never said that there were no PC's in the schools.

23 MR. CAMILO SALAS: Okay.

24 BY MR. CAMILO SALAS:

25 Q Mr. McDonald says that the Anderson people when

1 they did their investigation, they said "Anderson noted that
2 there were no desktop computers in any of the classrooms
3 visited in the schools."

4 MR. A.J. BENNAZAR: Of the two classrooms they
5 visited.

6 MR. CAMILO SALAS: Alright.

7 BY MR. CAMILO SALAS:

8 Q "Consequently, due to the lack of classroom
9 computers, we ascertain that the PR DOE was not able to fully
10 meet their educational objectives".

11 Now, ---

12 MR. A.J. BENNAZAR: In two classrooms.

13 MR. CAMILO SALAS: Alright.

14 BY MR. CAMILO SALAS:

15 Q Now, you also know, do you not, that the Department
16 of Education had tried to purchase 100,000 computers and
17 there was a problem with the bid and things like that.

18 And because of those problems, the 100,000
19 computers that were going to be sent to the schools so that
20 the students could access the Internet, were not in the
21 schools, for whatever reason, true?

22 A True. What is serious is that the ones that were
23 there were not connected.

24 Q Okay, we are going to get to those, okay. The ones
25 that were there were not connected, that's what you are

1 saying? There was some computers there that were not
2 connected, yes?

3 A From the ones that the team was able to observe and
4 the fact that those that were there were not able to be
5 connected into the Internet, which was the main reason, the
6 reason of being of all this. And the sort of things are
7 going to be presented by the recurring reports that the
8 committee is going to give to me. Plus what I was able to
9 observe myself.

10 Even, Counsel, in those institutions, those schools
11 where there was Internet, because there was Internet in some
12 schools, they came from projects that were not from the
13 institutional funding, they were from different fundings.
14 For example, there were competitive projects besides E-Rate.

15 I went to Osuna schools, they had a great
16 sophisticated Internet project, but it answered to another
17 proposal. It was not because of our connectivity to the net.

18 Q Let's pick up then where it was. There were
19 100,000 computers that the Department of Education tried to
20 purchase, had not being purchased for whatever reason, and
21 then you said that even the computers that were available in
22 the schools had not being connected, true?

23 A That's right.

24 Q Now, first of all, do you know if those computers
25 that were available in those schools were or had the capacity

1 to be connected and used in conjunction with the other
2 equipment that had been installed at those schools?

3 A From the electrical infrastructure point of view,
4 Counsel?

5 Q From the technical point of view, wether or not
6 those computers that were available had the capacity to be
7 used for the Internet connections with the equipment that was
8 provided under the E-Rate funds?

9 A My appreciation, which is all I can base myself on,
10 the equipment with all the support should have worked
11 adequately.

12 As a matter of fact, the information provided to me
13 is that the equipment and the investment in the project which
14 we are talking about, T1 infrastructure, was more than
15 sophisticated for the real need of the school.

16 I was fighting for a whole year to get a T1 for a
17 whole university. And when I get to the Department, I am
18 told that each school had a T1 with the concomitant cost of
19 that.

20 And of course, we have the question of what
21 analysis is made prior to the investment of that equipment,
22 in terms of the projection of the E-Rate project, and the
23 vision that we have of the process.

24 Q So, going back to my question.

25 A I think we parted from your question, I'm sorry.

1 Q What I'm gathering is that you made visits to some
2 schools and you saw that were some computers there. And that
3 you felt that, well, even in these schools there is a couple
4 of computers there, that there is no reason why they can't be
5 connected to the Internet. Is that...

6 A No, well, that's a superficial appreciation---

7 Q I'm trying to find out exactly---

8 A No, no, what I'm saying is there is evidence on the
9 part of the experts in this process who go out to see what is
10 the truth of the picture of this project.

11 And obviously, a technological neophyte, as I can
12 be, corroborates that on several situations there is an
13 infrastructure that is not being used, that is still in
14 boxes, that had been stored in a school like Cacique
15 Agueybaná, gathering dust; it was a really illogical picture.
16 It corroborates that something dysfunctional is happening in
17 the process.

18 Q Let me start from the bottom then, and maybe we'll
19 move our ways the other way, I think. For example, one of
20 the items you mentioned earlier was that in certain schools
21 you could not turn on the air conditioner, the computers, and
22 the terminals because the entire school would shut down.

23 A Even turn on the lights, like I said before.

24 Q Alright. Let's talk about that. Let's talk about
25 electricity. Now, do you know who had the obligation to

1 provide the proper electricity to the schools so that the
2 computers could be turned on?

3 A The one who was in charge to take that decision at
4 the beginning, was undoubtedly under the obligation to make
5 sure that everything that was going to be done would be in
6 condition to do so.

7 Q Did you know that the contract that you cancelled
8 on January 23rd, 2002, specifically stated, let me quote, "The
9 Department would be responsible for providing the adequate
10 power supply to operate the system and equipment provided by
11 DRC under the terms of this contract."

12 A Whatever was in the Contract at the time it was
13 signed is what the compromise was.

14 Q My question was, when you took the action of
15 cancelling that contract on January 23rd, 2002, did you read
16 the Contract or did you know about any other means, or did
17 anybody tell you that that contract that you were about to
18 cancel specifically stated that it was the Department's
19 obligation to provide the adequate power supply to operate
20 the system and the equipment. Did you know that?

21 A At the time I take the decision---

22 Q Prior to.

23 A ---I am being advised of all the implications of
24 the contract and of the decision I obviously do not recall
25 all the details.

1 Q Alright. So, if one of the problems was the lack
2 of adequate power supply, and you knew that the contract says
3 that the Department had the obligation to provide the power
4 supply, did you stop and think "wait a minute, we have to
5 supply the power for these computers, let's go and do it."
6 "Let's fix the schools, let's fix the power supplies so that
7 we can run the schools." If that was one of the problems?

8 A The thing is that the contract is not cancelled
9 for lack of electricity. It is cancelled because of the
10 dissatisfaction with the expected performance.

11 Q But I thought you said earlier that one of the
12 deficiencies at the time was that you could not run the
13 computers, and the terminals, and the air conditioner at the
14 schools?

15 A I told you that I made an inventory and a glossary
16 of all the situations that we had found that were not being
17 complied with.

18 Q Can I take it then that that is not one reason why
19 you cancelled---

20 A No, no, excuse me. I just believe we are not
21 communicating. I insist that what I'm stating is a picture
22 of the dissatisfaction within the whole system which includes
23 multiple variants.

24 Q Can we agree that the Department of Education was
25 responsible for providing the adequate power supply to

1 operate the system and equipment provided by DRC under the
2 terms of the contract that you cancelled? Do you agree in
3 that?

4 MR. A.J. BENNAZAR: To the extent it seeks to elicit
5 a legal opinion from another lawyer who is sitting here as a
6 fact witness, the question is objected to. He told you he
7 took the advice of Counsel to not take it upon himself to
8 interpret the legal technicalities. Said it twice already.

9 BY MR. CAMILO SALAS:

10 Q Aside from, I'm not asking you for a legal opinion,
11 is it your understanding? No, I'm not. I'm asking you as
12 the Head of the Department of Education, is it your
13 understanding that the Department had the obligation of
14 providing the adequate power supply to operate the system and
15 equipment provided by DRC under the terms of the contract
16 that you cancelled on January 23rd, 2002?

17 MR. A.J. BENNAZAR: Same objection.

18 BY MR. CAMILO SALAS:

19 Q You can answer.

20 A At the time I make the decision, I take the advice
21 and the counsel and the reports of my advisors.

22 Q And did they tell you that it was the Department's
23 duty to provide the adequate power supply?

24 A I don't recall the specifics, I'm sorry.

25 Q You had lawyers providing you advice at the time?

1 A The Legal Division.

2 Q And who specifically was dealing with that?

3 A Who was specifically dealing with it, I don't
4 recall, but...

5 Q Now, let's go back then. I'll get back to that in
6 a moment. Let's go back to the overall picture that you were
7 talking about.

8 Another item that you mentioned was that the
9 computers were distributed without training. I didn't
10 understand what you meant by that. Was that without
11 training, is that what you meant?

12 A Without the training of professional capacity.

13 Q Computers are being distributed without giving the
14 teachers adequate training to operate that equipment?

15 A Enough training to...

16 Q Who had the obligation to train the teachers?

17 A Again, I don't know the specifics of this, but the
18 sensation of the people, of the students, and of the
19 teachers, was that they were not prepared enough,
20 sufficiently enough.

21 As a matter of fact, the survey, Counsel, was
22 evidence of the dramatic deficiencies.

23 And there is a picture of not knowing what they
24 were for. And I come to that decision from the fact that
25 some were not functioning and others were being used as